IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-684

W. J. ESTELLE,

Petitioner,

versus

ROBERT VERNON BRUCE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent Robert Vernon Bruce, an inmate of the Texas Department of Corrections, respectfully moves pursuant to Rule 53 of the Court for leave to proceed in forma pauperis and to file the accompanying typewritten Brief in Opposition. The affidavit required by 28 U.S.C. § 1915 is attached to this motion.

Respectfully submitted,

MORRIS I. JAFFE
JAMES S. PLEASANT
1000 LTV Tower
Dallas, Texas 75201
(214) 748-7211

MICHAEL ANTHONY MANESS
2260 Two Shell Plaza
Houston, Texas 77002
(713) 224-8900

Counsel for Respondent Robert
Vernon Bruce

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THE STATE OF TEXAS

COUNTY OF WALKER

AFFIDAVIT IN SUPPORT OF THE MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, ROBERT VERNON BRUCE, being first duly sworn according to law, depose and state in support of the foregoing motion for leave to proceed in forma pauperis that I am the Respondent in the above styled and numbered cause; that I am presently an inmate of the Texas Department of Corrections and am therefore unable to pay the fees or costs of this proceeding, to give security therefor or to afford the expense of printing Respondent's Brief in Opposition; and that I believe I am entitled to redress.

I have previously been allowed to proceed in forma pauperis in both the District Court and the Court of Appeals.

I am executing this affidavit pursuant to 28 U.S.C. § 1915. The matters stated herein are true and correct.

Robert Vernon Bruce
ROBERT VERNON BRUCE

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT VERNON BRUCE, who being by me first duly sworn deposed and stated under oath that he is the individual named in the foregoing affidavit and that the matters stated therein are true and correct.

SUBSCRIBED TO AND SWORN BEFORE ME, a notary public, on this 30 day of Nov, 1976, to certify which witness my hand and seal of office.

T L Stokely
NOTARY PUBLIC IN AND FOR
WALKER COUNTY, TEXAS

T.L. STOKELY NOTARY PUBLIC
IN AND FOR WALKER COUNTY, TEXAS

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RESPONDENT'S BRIEF IN OPPOSITION

This case is extraordinary only in the sense that a mentally incompetent criminal defendant, convicted in a Texas court for the murder of his wife in 1965, has finally secured Federal habeas corpus relief in his third appearance before the United States Court of Appeals for the Fifth Circuit, after having presented the bizarre and totally unprecedented circumstances surrounding his conviction to approximately 22 State and Federal trial and appellate Judges in post-conviction proceedings that have lasted more than a decade.

Otherwise the judgment of the Court of Appeals is unexceptional. Because the petition for certiorari presents nothing resembling a substantial Federal question, review obviously should be denied.

STATEMENT OF THE CASE

The Fifth Circuit has dealt with this case on three separate occasions. The opinion which the petition for certiorari attempts unsuccessfully to disparage, Bruce v. Estelle, 536 F.2d 1051 (5 Cir., 1976), was preceded by two other opinions remanding the cause for further development of the facts. Bruce v. Estelle, 483 F.2d 1031 (5 Cir., 1973); Bruce v. Beto, 396 F.2d 212 (5 Cir., 1968). The monumental evidence of Respondent's mental incompetence at his trial in 1965, less than nine months after he was adjudged mentally ill and committed to a State institution, is exhaustively analysed in these opinions and need not be restated.

ARGUMENT

Apparently counsel for the Petitioner would have the Court believe that the Fifth Circuit casually and irresponsibly reversed the District Court simply because the Petitioner's evidence was quantitatively inferior to the Respondent's (Petition for Certiorari, p. 4), and because the Respondent's erratic behavior in the courtroom was given virtually conclusive weight (Petition for Certiorari, p. 8). This view of the matter is, with deference, nonsensical.

What actually happened is that, after providing the State of Texas with every conceivable opportunity to refute the overwhelming evidence of incompetence generated in protracted State and Federal evidentiary proceedings, the Court of Appeals finally concluded, in a painstakingly constructed opinion prepared by one of its most distinguished Judges, that on the entire record the District Court's decision to the contrary was clearly wrong and that the Respondent was mentally incompetent at trial. The testimonial and documentary evidence on both sides of the issue was meticulously and exhaustively

considered. If there were ever a case in which a Court of Appeals were justified in concluding that it was not bound by the disposition of a cause by the District Court, this is it.

There are, of course, alternative grounds sustaining the Fifth Circuit's decision. A retrospective judicial determination of the competence issue almost a decade after trial, totally unsupported by any psychiatric evaluation contemporaneous with trial and dependent in large measure upon "information contained in the printed record," Pate v. Robinson, 383 U.S. 375, 387 (1966), is, in the peculiar circumstances of this case, a constitutionally impermissible substitute for the hearing that should have been accorded to the Respondent in 1965. Cf. Drope v. Missouri, 420 U.S. 162, 183 (1975); Dusky v. United States, 362 U.S 402 (1960). And, since the determination of the competence issue involves so-called "mixed questions of law and fact," the judgment of the Court of Appeals is supportable on the independent ground that Rule 52 of the Federal Rules of Civil Procedure and the "clearly erroneous" rule are simply inapplicable to the resolution of an ultimate constitutional issue. In such circumstances a reviewing court is required to apply governing constitutional principles "upon the basis of an independent review of the facts of [the] case." Jacobellis v. Ohio, 378 U.S. 184, 189 (1964); Norris v. Alabama, 294 U.S. 587, 590 (1935); Watts v. Indiana, 338 U.S. 49, 51 (1949); cf. Townsend v. Sain, 372 U.S. 293, 318 (1963). The Fifth Circuit here rejected no findings of either the Federal District Court or the State Trial Court with respect to operative or evidentiary facts, "in the sense of a recital of external events and the credibility of their narrators," Brown v. Allen, 344 U.S. 443, 506 (1953), but merely rejected the ultimate legal conclusion that such facts established that the Respondent had at trial "sufficient present ability to consult with his lawyer

with a reasonable degree of rational understanding and * * * a rational as well as factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402 (1960). Such "tough individual problems of constitutional judgment," Roth v. United States, 354 U.S. 476, 498 (1957), have always been within the province of a United States Circuit Judge.

These matters aside, there is clearly nothing about this case that could conceivably warrant review by this Court. No new constitutional principle has been announced or applied. No striking departure from previous decisions has been undertaken. The disposition of this cause by the Fifth Circuit has had and will have no impact whatever upon the administration of criminal justice generally. The facts are unique. Hopefully, they will never arise again.

Unless (as the petition for certiorari obliquely suggests) Federal District Judges are invariably to be regarded as conclusive arbiters of claims of mental incompetence, leaving the Courts of Appeals to rubber-stamp their decisions on the issue, the Fifth Circuit correctly disposed of this case. Eleven years, 22 Judges and three appeals after the fact, that should end it.

CONCLUSION

For the foregoing reasons, Respondent Robert Vernon Bruce respectfully suggests that the petition for certiorari should be denied.

Respectfully submitted,

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1000 LTV Tower
Dallas, Texas 75201
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2260 Two Shell Plaza
Houston, Texas 77002
(713) 224-8900

Counsel for Respondent Robert Vernon Bruce